

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

BETTY AGEE, Individually and as	)		
Representative of the Estate of	)		
RICHARD L. AGEE, (deceased), et al.	)	CIVIL ACTION NO.	06-668
	)		
Plaintiffs	)		
	)		
v.	)		
	)		
A.W. CHESTERTON, et al,	)		
	)		
Defendants.	)		

**ANSWER OF DEFENDANT ZURN INDUSTRIES**  
**WITH AFFIRMATIVE DEFENSES AND CROSS CLAIMS TO**  
**THE PLAINTIFFS' COMPLAINT**

Defendant Zurn Industries answers the allegations set forth in Plaintiffs' Complaints as follows:

## JURISDICTION AND VENUE

Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations as to jurisdiction and venue. Therefore, the allegations are denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

## STATUTE OF LIMITATIONS

Answering defendant denies all of the plaintiffs' assertions in reference to the application of the Statute of Limitations.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

**BACKGROUND FACTS – THE PLAINTIFFS**

1. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

2. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

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117. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

**BACKGROUND FACTS- THE DEFENDANTS**

118. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of this Answer as if fully set forth herein.

119. Denied

120. (a) through (bb), Denied.

121. Denied

122. Denied.

123. Denied

124. Answering defendant is without sufficient knowledge to either admit or deny plaintiffs' allegations. Therefore, the allegations are denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

**DEFENDANT'S CONDUCT AND PLAINTIFF'S DECENDANT'S INJURY**

125. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of this Answer as if fully set forth herein.

126. Denied.

127. Denied

128. Denied.

129. (a) through (r) Denied.

130. Denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

**COUNT ONE**

131. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of this Answer as if fully set forth herein.

132. (a) through (b), Denied.

133. Denied.

134. Denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

**COUNT TWO**

135. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

141. Denied.

142. Denied.

143. Denied.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

**COUNT THREE**

148. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

149. Denied.

150. Denied.

151. Denied.

152. Denied.

153. Denied.

154. Denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

#### **COUNT FOUR**

155. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

156. Denied.

157. Denied.

158. Denied.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

#### **AFFIRMATIVE DEFENSES**

159. Answering defendant hereby adopts, alleges and incorporates by reference all of the averments and answers set forth in the paragraphs of the Answer as if fully set forth herein.

#### **FIRST AFFIRMATIVE DEFENSE**

160. The complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

161. The claims set forth in the Complaint are barred by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

162. The plaintiffs were contributorily negligent in that they used and exposed themselves to products which they knew or should have known would be injurious to their health, and they failed to take reasonable precautions to guard against any dangers resulting therefrom.

**FOURTH AFFIRMATIVE DEFENSE**

163. The plaintiffs assumed the risk of any injuries about which they complained.

**FIFTH AFFIRMATIVE DEFENSE**

164. At all relevant times, the knowledge of other persons and business entities, and the ability of such other persons and business entities to take action to prevent the injuries of which plaintiffs complain, was superior to that of the answering defendant, and therefore, if there was any duty to warn plaintiffs, the duty was on those other persons and business entities and not on the answering defendant.

**SIXTH AFFIRMATIVE DEFENSE**

165. The answering defendant is immune from liability for any conduct performed in conformance with government specifications.

**SEVENTH AFFIRMATIVE DEFENSE**

166. The failure of plaintiff's employer to warn and/or safeguard plaintiffs from any possible health hazards associated with asbestos was an intervening and superseding cause of plaintiffs' alleged injuries.



**EIGHTH AFFIRMATIVE DEFENSE**

167. Plaintiffs' employers' failure to provide the proper protective equipment to insure a safe working environment was the proximate cause of any injuries of which plaintiffs complain.

**NINTH AFFIRMATIVE DEFENSE**

168. The Complaint fails to state a claim for punitive damages.

**TENTH AFFIRMATIVE DEFENSE**

169. The complaint fails to state a claim upon which relief can be granted for prejudgment interests.

**ELEVENTH AFFIRMATIVE DEFENSE**

170. The claims for punitive damages are barred by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of The United States of America and of the Constitution of the State of Delaware.

**TWELFTH AFFIRMATIVE DEFENSE**

171. Claims for punitive damages are barred by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

**THIRTEENTH AFFIRMATIVE DEFENSE**

172. This action is barred by the doctrine of sophisticated purchaser.

**FOURTEENTH AFFIRMATIVE DEFENSE**

173. Plaintiff's injuries, if any, were solely and proximately caused by the negligence of some person or persons, corporation, association or other entity not a party to this lawsuit, or were solely and proximately caused by defects in products manufactured by some other person or person, corporation, association or legal entity not a party to this lawsuit.

**FIFTEENTH AFFIRMATIVE DEFENSE**

174. The plaintiff misused the asbestos containing product which misuse was the proximate cause or contributed to the injuries and damages of which plaintiff complains.

**SIXTEENTH AFFIRMATIVE DEFENSE**

175. If it is proven that the plaintiff came in contact with or was exposed to any products manufactured, sold and/or used by answering Defendant, said products were materially changed, altered or modified by others, including but not limited to the plaintiffs themselves.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

176. Answering Defendant had no knowledge of the dangerous propensities of the material allegedly causing the injuries and damages to the plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

177. At the time of the manufacture, distribution, sale or use of any products for which answering Defendant is alleged to be liable, the body of knowledge in the scientific, medical and industrial communities did not recognize any risk of danger connected with the use of said products, and accordingly answering Defendant relies on the state-of-the-art defense.

**NINETEENTH AFFIRMATIVE DEFENSE**

178. In the event it is found that plaintiff was exposed to any products supplied by answering Defendant such exposure was *de minimus* and is not sufficient to establish a reasonable degree of probability that a product supplied by answering Defendant caused any injury to the plaintiff.

**TWENTIETH AFFIRMATIVE DEFENSE**

179. The alleged incident, injuries and damages of which the plaintiffs complain were caused by unauthorized, unintended or improper use of the products complained of and as a result

of the failure to exercise reasonable and ordinary care, caution or vigilance for which answering Defendant is not legally liable or responsible.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

180. Answering Defendant is entitled to a set-off for any amounts paid or to be paid by other Defendants as a settlement with plaintiffs.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

181. The complaint should be dismissed as to the answering Defendant under the doctrine of *forum non conveniens*.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

182. Answering defendant is not liable for the intentional torts of any of it's predecessors in-interest.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

183. Strict liability is not the law in the State of Delaware

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

184. Plaintiffs are estopped from proceeding with causes of actions alleged in their complaint.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

185. The complaint fails to specify any willful or wanton conduct on the part of the answering defendant, and therefore, all claims for and references to the recovery of special damages in the complaint must be stricken.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

186. The complaint fails to specifically state the items of special damages claimed as required by Court Rule 9(g) and, therefore, all claims for and references to the recovery of special damages in the complaint must be stricken.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

187. The complaint fails to allege with specificity any acts, actions or conduct on the part of the answering defendant which constitute negligence, fraud or conspiracy as required by Court Rule 9 and therefore all claims and/or damages based upon allegations of negligence, fraud or conspiracy must be stricken.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

188. Plaintiffs' claims for punitive damages are barred by the Due Process clause of the Fourteenth Amendment of the Constitution of the United States of America.

**THIRTIETH AFFIRMATIVE DEFENSE**

189. Plaintiffs' claims for punitive damages are barred by the "double jeopardy" clause of the Fifth Amendment of the Constitution of the United States of America.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

190. The process of original service of process is insufficient; statutory and court rule requirements have not been satisfied.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

191. The claims have been compromised and settled with the named defendant.

**MOTION TO STRIKE**

192. The Complaint fails to allege any willful, wanton, or reckless conduct on the part of the answering Defendant specifically, and therefore, all claims for and reference to the recovery of punitive damages in the Complaint must be stricken as to the answering Defendant.

193. The Complaint fails to allege any acts, actions, or conduct on the part of the answering Defendant which constitute fraud or conspiracy with specificity as required by Federal District Court Civil Rule 9, therefore, all claims and/or damages based upon allegations of fraud or conspiracy must be stricken as to the answering Defendant.

**MOTION TO DISMISS**

194. References to strict liability and/or premises liability fail to state a claim upon which relief can be granted against the answering Defendant, and therefore, the Complaint must be dismissed.

195. The complaint must be dismissed, pursuant to Federal District Court Rule 12(b)(2), on the basis of a lack of personal jurisdiction over the answering Defendant.

**CROSS CLAIM FOR CONTRIBUTION AND INDEMNIFICATION**

196. The answering Defendant denies that it is liable to the plaintiff in any respect. However, in the event that the answering Defendant is held liable to the plaintiff, then it cross claims against each and every co-Defendant, on the grounds that the conduct of one or several co-Defendants, was the primary cause of the damage sustained by the plaintiff and that the answering Defendant, if liable at all, is only secondarily liable. The answering Defendant, therefore, is entitled to indemnification from each and every co-Defendant.

197. In the event that the answering Defendant is held primarily liable to the plaintiff, then the alleged wrongful acts of the co-Defendants are contributing causes of the damages

sustained by the plaintiff and the answering Defendant is entitled to contribution in any amount which it may be required to pay to the plaintiff as a result of the co-Defendant's wrongful acts, based on the relative degrees of fault determined pursuant to the provisions of Delaware's Uniform Contribution Among Tortfeasors Law, 10 Del. C. §6308.

**ANSWERS TO CROSSCLAIMS**

198. The answering defendant denies the allegations of any crossclaim that has been or may be asserted against it and demands that any such crossclaim be dismissed. Further, it is asserted that if liability is found, there should be apportionment made by trier of fact.

**JURY DEMAND**

Answering defendant hereby demands a Jury of Twelve to hear and decide all issues of fact which have been raised or may be raised by plaintiffs, defendant and co-defendants.

**WHEREFORE**, defendant, Zurn Industries demands that the Complaint be dismissed with costs assessed to plaintiffs.

ELZUFON AUSTIN REARDON  
TARLOV & MONDELL, P.A.

**/s/ MATTHEW P. DONELSON**

MATTHEW P. DONELSON (BAR ID#4243)  
300 Delaware Avenue, 17<sup>th</sup> Floor  
P.O. Box 1630  
Wilmington, DE 19899-1630  
302/428-3181  
Attorney for Defendant  
Zurn Industries

DATE: November 21, 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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BETTY AGEE, Individually and as	)		
Representative of the Estate of	)		
RICHARD L. AGEE, (deceased), et al.	)	CIVIL ACTION NO.	06-668
	)		
Plaintiffs	)		
	)		
v.	)		
	)		
A.W. CHESTERTON, et al,	)		
	)		
Defendants.	)		

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**CERTIFICATE OF SERVICE**

I, Matthew P. Doneslon, Esquire hereby certify that on the 21<sup>st</sup> day of November, 2006  
A Notice of Appearance and Defendant's Answer to the Complaint was served by electronic  
filing on the following counsel of record:

Robert Jacobs, Esquire  
Jacobs & Crumplar, P.A.  
2 E. 7<sup>th</sup> Street  
Wilmington, DE 19801  
Attorney for Plaintiffs

Jonathan L. Parshall, Esquire  
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Attorney for Brandon Drying Fabrics, Inc

Donald E. Reid, Esquire  
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Attorney for Georgia-Pacific Corporation

ELZUFON AUSTIN REARDON  
TARLOV & MONDELL, P.A.

*/s/ MATTHEW P. DONELSON*

MATTHEW P. DONELSON (BAR ID#4243)  
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Wilmington, DE 19899-1630  
Attorney for Defendant  
Zurn Industries

Dated: November 21, 2006